

**Notice of Allowability**

Application No.

10/687,503

Examiner

Gloria R. Weeks

Applicant(s)

DOLL ET AL.

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to RCE (3/30/06).
2. ☒ The allowed claim(s) is/are 1, 3-10 and 12-22.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 3/30/06
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on March 30, 2006 has been entered.

***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on March 30, 2006 was filed after the mailing date of the Notice of Allowance on February 28, 2006. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

***Examiner's Amendment***

3. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Dean Garner on July 18, 2006.

4. The application has been amended as follows to updated continuation information and overcome 112 2<sup>nd</sup> Paragraph rejections:

SPECIFICATION:

Paragraph 1 line 2, insert the phrase --,USPN 7,044,352,- - after the number "10/441,424".

CLAIMS:

In claim 1 line 9, the phrase "firing member" has been replaced with the phrase - - firing bar - -.

In claim 1 line 10, the term "wedge" has been replaced with the phrase - - wedge member- -

In claim 4 line 1, the term "wedge" has been replaced with the phrase - - wedge member- -

In claim 4 line 2, the phrase "firing member" has been replaced with the phrase - - firing bar - -.

In claim 4 line 4, the phrase "lockout" has been replaced with the phrase - - lockout mechanism - -.

In claim 8 line 2, the phrase "firing member" has been replaced with the phrase - - firing bar - -.

In claim 8 line 2, the phrase "lockout" has been replaced with the phrase - - lockout mechanism - -.

In claim 10 line 11, the phrase "firing member" has been replaced with the phrase - - firing bar - -.

In claim 10 line 12, the term "wedge" has been replaced with the phrase - - wedge member- -

In claim 13 lines 1 & 5, the term "channel" has been replaced with the phrase - - elongate channel- -

In claim 13 line 5, the phrase "biasing member" has been replaced with the phrase - - biasing feature- -

In claim 14 line 2, the term "on" has been replaced with the term - - one- -

In claim 16 line 2, the phrase "firing member" has been replaced with the phrase - - firing bar - -.

In claim 17 line 1, the term “wedge” has been replaced with the phrase - - wedge member- -

In claim 17 line 2, the phrase “firing member” has been replaced with the phrase - - firing bar - -.

In claim 17 line 4, the phrase “lockout” has been replaced with the phrase - - lockout mechanism - -.

In claim 20 line 2, the term “channel” has been replaced with the phrase - - elongate channel- -

In claim 20 line 3, the phrase “firing member” has been replaced with the phrase - - firing bar - -.

In claim 21 line 1, the phrase “firing member” has been replaced with the phrase - - firing bar - -.

In claim 21 line 2, insert the term - -edge- - following the term “edge”.

In claim 22 lines 9 & 14, the phrase “firing member” has been replaced with the phrase - - firing bar - -.

In claim 22 line 11, the term “wedge” has been replaced with the phrase - - wedge member- -.

In claim 22 line 13, the phrase “ring trigger” has been replaced with the phrase - - firing trigger- -

***Reasons For Allowance***

5. The following is an examiner's statement of reasons for allowance: Upon further examination of the art of record, it has been decided that the art considered as a whole, alone or in combination, neither anticipated nor renders obvious the claimed surgical instrument comprising a longitudinally movable wedge member engageable and disengageable with a firing bar; a locking mechanism, wherein a biasing element biases the firing bar in an unlocked position prior to the firing bar engaging the wedge member, and wherein the wedge member biases the firing bar into an unlocked position prior to deployment of staples from the surgical instrument, and the wedge member is disengaged from the firing bar in the locked position.

While the prior art is found to teach surgical instruments comprising a biasing element in combination with a locking mechanism, wherein the biasing element biases the firing bar into an unlocked position prior to deployment of staples from the surgical instrument, the prior art does not disclose this feature in combination with a wedge member that also biases the firing bar in an unlocked position wherein the wedge member is disengaged from the firing bar after deployment of staples from the surgical instrument, thereby allowing the locking mechanism to engage the firing bar. In essence, Applicant's invention includes two unlocking elements rather than a single unlocking element. The advantage of Applicant's lockout mechanism is the wedge member, like the biasing element, does not move in a retracting direction, thereby allowing the firing bar to become locked whether the staple cartridge of the surgical instrument is partially spent or fully spent.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue

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fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."


***Conclusion***


6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria R. Weeks whose telephone number is (571) 272-4473. The examiner can normally be reached on M-F 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gloria R. Weeks  
Examiner  
Art Unit 3721

  
grw  
June 26, 2006

  
SCOTT A. SMITH  
PRIMARY EXAMINER